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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS and MARGARET W. COLLINS, *Plaintiffs*,

v.

THE UNITED STATES, *Defendant*.

PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE COURT OF CLAIMS DATED MARCH 7, 1962

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To the Honorable The Chief Justice and the Associate Justices of The Supreme Court of the United States:

Your petitioners, John W. D. Collins and Margaret W. Collins, husband and wife, in the action of themselves against the United States, in the United States Court of Claims, hereby pray this Honorable Court to issue its Writ of Certiorari to the Court of Claims to review the judgment of the Court of Claims rendered in the above entitled case, March 7, 1962, said case being numbered 477-56 in said Court of Claims.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, sub-section (b) of Section 288 of the United States Code.

The opinion and judgment of the Court of Claims and its Findings of Fact are herewith attached as part of this petition.

Orders for Extensions of Time for Filing Petition for Certiorari

Extension of time for filing Petition:

Order of Chief Justice, dated June 4, 1962, extending time for filing Petition of Certiorari to July 5, 1962.

Order of Chief Justice, dated June 27, 1962, extending time for filing Petition to August 1, 1962.

Copies of orders of the Chief Justice attached hereto

Findings of Facts

Plaintiffs and defendants have accepted the Findings of Fact stated by the U.S. Court of Claims in its decision of March 7, 1962 and any discussion of the facts herein will be based upon the Court of Claims Findings.

Plaintiffs only claim their right to refunds for all taxes levied and collected upon their earnings from the Panama Canal Co., and the Canal Zone Government for the years 1953 and 1954. Other claims are waived.

STATUTES INVOLVED

Revenue Act of 1950

220. Employees of the United States Working in Possessions of the United States or in the Canal Zone.

Effective with respect to taxable years beginning after December 31, 1949, section 251 (relating to income from sources within possessions of United

States) is hereby amended by adding at the end thereof the following new subsection:

"(j) Employees of United States.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States."

Internal Revenue Code of 1939 as amended

Supplement J.—Possessions of the United States

251. Income from sources within possessions of United States.

(a) General rule.—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States.

(j) Employees of United States.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources *within* the United States. (Italics supplied)

Internal Revenue Code of 1954, as amended.

931. Income from sources within possessions of the United States.

(i) Employees of the United States.—For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

Internal Revenue Code of 1954, as amended

7701. Definitions:

(9) United States.—The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Constitution of the United States—Amendment V.

Trials for crimes: Just compensation for private property taken for public use.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, *without just compensation.* (Italics ours.)

Constitution of the United States—Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

THE DECISION OF THE COURT OF CLAIMS

"PER CURIAM: This is a suit for the recovery of income taxes deducted for the years 1951 through 1954 from the salaries of plaintiffs, husband and wife, who are citizens of the United States and were employed by various agencies of the United States Government while residing in the Republic of Panama in 1951 and 1952 and the Canal Zone in 1953 and 1954. The question involved is whether Section

251(j), of the Internal Revenue Code of 1939, 26 U.S.C. § 251 (1952 Ed.) and the comparable Section 931(i) of the Internal Revenue Code of 1954, 26 U.S.C. § 931 (1958 Ed.), contravene the due process clause of the Fifth Amendment to the Constitution, because they deny employees of the United States or its agencies an exemption from Federal income taxes when employed in possessions of the United States, by providing that income of Federal employees shall "be deemed to be derived from sources within the United States." Plaintiffs were employed by agencies of the United States located in an area within the legislative power of the United States. Therefore, the income was "derived from sources within the United States" and we hold it within the taxing power of the Congress. Plaintiffs are therefore not entitled to recover and their petition, as amended, will be dismissed."

CENTRAL QUESTION PRESENTED

The question of central and vital importance is Plaintiffs contention that Sec. 931(i) of the Internal Revenue Code of 1954 is unconstitutional and violates the due process clauses of the 5th and 14th Amendments of the Constitution in that subsection (i) creates an irrebuttable presumption contrary to the existing facts and deprives Plaintiffs of their constitutional right of due process—i.e. the right to prove that the presumption in subsection (i) of Section 931 is arbitrary and capricious and contrary to the facts and creates a wrongful tax liability.

RELATED QUESTIONS ARISING FROM THE EVIDENCE PRESENTED

Related questions to this central question presented in the above decision of the Court of Claims are the following:

1. Whether the Court of Claims decision misinterprets the legal meaning of section 931(i) of the Internal Revenue Code of 1954, wherein it *did not decide*, as it should have

that said subsection (i) is unconstitutional and violative of the 14th and 5th amendments to the Constitution.

2. *Whether* the decision of the Court of Claims of March 7, 1962 conflicts with decisions of this Court in its failure to hold that subsection (i) of Section 931 of the Internal Revenue Code of 1954 creates against Plaintiffs an irrebuttable presumption against fact, to wit that their earnings for 1953 and 1954 were legally earned and received *within* the boundaries of the United States and were within the taxing power of the Congress when, as petitioners claim, and as the Findings of Fact by the United States Court of Claims show, such income received for the years 1953 and 1954 *were earned and paid outside of the United States and were not taxable because such assessments are based upon an irrebuttable presumption, contrary to the facts*, as stated in the evidence, which presumption was a violation of the 5th and 14th Amendments of the Constitution of the United States, and also a violation of the terms of Section 7701, subsection 9 of the Internal Revenue Code of 1954, which defines the term UNITED STATES in its "geographical" sense, as follows:

> "7701. Definitions.
>
> (9) UNITED STATES.—The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia." . . .

3. *Whether* the Opinion and Judgment of the Court of Claims, denying plaintiffs' the tax refunds for the years 1953 and 1954, was arbitrary and unsupported by the facts and whether or not said Court of Claims committed error in dismissing Plaintiffs claims for refunds of said taxes.

4. *Whether* said U. S. Court of Claims misinterpreted Section 931(i) of the Internal Revenue Code of 1954, as

amended, by its holding that the taxes paid by Plaintiffs on their earnings for the years 1953 and 1954 were earned and accrued to Plaintiffs within the United States, for services rendered for the Canal Zone Government and for the Panama Canal Co., when they were in fact employed and served as employees of the Canal Zone Government and the Panama Canal Co., outside the boundaries of the United States.

5. *Whether* the U. S. Court of Claims erroneously misinterpreted subsection (i) of Section 931 of the 1954 Internal Revenue Code in its decision of March 7, 1962, that Plaintiffs earnings were taxable because of an irrebuttable presumption, contrary to fact, in subsection (i) of Section 931, Internal Revenue Code of 1954 to the effect that said earnings for the years 1953 and 1954 were, under subsection (1), *deemed to be* derived from sources *within* the United States, in violation of Plaintiffs constitutional rights of due process.

6. *Whether* said U. S. Court of Claims erred in its March 7, 1962 Opinion and Judgment in holding that the wages paid to Plaintiffs for the years 1953 and 1954 were taxable because the area where such sums were earned by and paid to Plaintiffs was legally "*within the taxing power of the United States*", when, as a matter of law and fact, said area, where said taxes were assessed and collected, was legally and in fact *outside* the geographical boundaries of the United States, as defined by Section 7701, subsection 9, of the Internal Revenue Code of 1954, as above quoted.

7. *Whether* said U. S. Court of Claims, in its opinion and judgment, has decided important questions of Federal Law in such a way as to be in conflict with applicable decisions of this Court, and has erroneously failed to pass upon the question of the constitutionality of such Federal Law to wit; Section 931 subsection (i) Internal Revenue Code of 1954, said decision resulting in a denial of due process of

law to Plaintiffs, as guaranteed by the 5th and 14th Amendments of the Constitution, thereby depriving Plaintiffs of tax exemptions on their earnings while employed by the Panama Canal Zone, and by the Panama Canal Government, *outside the boundaries* of the United States, during the years 1953 and 1954.

The above conclusion by the Court of Claims contradicts other factual conclusions of the Court in its decision of March 7, 1962 wherein the Court said:

> "The Canal Zone Government, a separate entity, is charged with the functions of civil government, such as police and fire protection, schools, magistrate Courts, and other similar activities."

The decision of the Court of Claims, as to the locale of Plaintiffs services and earnings are contradicted by the Findings of Fact by the Court of Claims as to the location of the Canal Zone Government and the Panama Canal Company to wit:

> "10. The Canal Zone is an area approximately 10 miles wide, 5 miles on each side of the center line of the waterway, extending from deep water in the Atlantic Ocean to deep water in the Pacific Ocean, excepting the city of Panama on the Pacific side and Colon on the Atlantic side which are adjacent to the Canal Zone terminal communities of Balboa and Cristobal respectively."
>
> "16. . . . The end result is that the Treasury of the United States pays no part of the cost of the operation of the Canal Zone Government. Appropriated funds are not used for the payment of payrolls or other expenses of the Panama Canal Company, except to the extent that the company is reimbursed for services which it performs for the Canal Zone Government."

ARGUMENT

In the opinion of the Court of Claims, the following statement is made:

> "Plaintiffs were employed by agencies of the United States located *in an area within the legislative power of the United States.* Therefore, the income was '*derived from sources within the United States*' and we hold it within the taxing power of the Congress. Plaintiffs are therefore *not entitled to recover* and their petition, as amended, will be dismissed.
> "It is so ordered." (Italics supplied)

The above finding constitutes error in fact and in law.

No warrant in law exists, we respectfully submit, for the above finding.

We further submit these conclusions by the Court were based upon an erroneous conception of the taxing power of Congress. We further respectfully submit that the Court's refusal to hold that the taxes complained of were wrongfully assessed and withheld in violation of the 5th and 14th Amendments to the Constitution, should be reviewed, and a determination rendered to the effect that defendants unlawfully levied and collected taxes against plaintiffs upon their earnings for 1953 and 1954, as employees of the Panama Canal Company and the Canal Zone Government *outside the United States.*

The following sums were earned and plaintiffs paid the following taxes:

				Earnings	Taxes
1953	Husband	Panama Canal Co.	Canal Zone	$4,883.68	
	Wife	Canal Zone Govt.	Canal Zone	110.00	$ 407.01
1954	Husband	Panama Canal Co.	Canal Zone	5,593.45	
	Wife	Panama Canal Co.	Canal Zone	3,982.50	1,291.31

Refunds on other items in Plaintiffs' original Petition are waived.

Plaintiffs urge upon the Court that nothing in the evidence, as set out in the Commissioner's report, or in the

briefs or in the Court's Findings of Fact, warrants the conclusion that any of the above income received by the Plaintiffs for their services to the above organizations during 1953 and 1954 were received by said Plaintiffs from agencies of the United States, in an area "within the legislative power of the United States" and Plaintiffs urge that taxing such earnings by the Internal Revenue Bureau of the United States was legally invalid.

Section 931, Subsection (i), Internal Revenue Code of 1954, Creating An Irrebuttable Presumption of Tax Liability Is Unconstitutional and Violates Both the 5th and 14th Amendments

The Fifth Amendment to the Constitution of the United States is quoted above and the relevant portion offered, governing property rights, reads as follows:

> No citizen shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 931(i) of the Internal Revenue Code presents an irrebuttable presumption wherein it declares that the services of a citizen of the United States, as an employee of the United States or any agency thereof, "shall be *deemed to be derived from sources within the United States.*"

Similar presumptions declaring a fact to exist when such declaration is contrary to such fact so declared, amounts to a denial of due process to the citizen affected.

Many cases have gone to this Court for an interpretation of similar statutes of an arbitrary character where presumption of facts against reality existed, thereby denying to a citizen or taxpayer opportunity to prove the true facts; and such statutes were held to be unconstitutional.

In the case of *Schlesinger* v. *United States*, 270 U.S. 230, this Court confirmed the principle that an irrebuttable

presumption against realities or provable facts was so unreasonable and arbitrary that it could not stand under the Fourteenth Amendment. And in the case of *Coolidge* v. *Long*, 282 U.S. 383, this Court held that the principles requiring due process were the same in the Fifth and Fourteenth Amendments.

The 5th and 14th Amendments are linked together by this Court in *Coolidge* v. *Long*, 282 U.S. 582, 75 L. Ed. 562.

In *United States* v. *Wells*, 283 U.S. 102, this Court (opinion by Chief Justice Hughes) decided that any assumption of contemplated death creates a situation where the act of the Legislature cannot stand if the right to prove the contrary to the assumption is not afforded.

Another important case, *Nichols* v. *Coolidge*, 274 U.S. 531; opinion by Mr. Justice McReynolds, holds in a broader sense and this Court applied the same principle of invalidity as to an arbitrary statute as to the title to property, *Chase National Bank* v. *United States*, 273 U.S. 827.

The Court of Claims Decision That Plaintiffs Were Employed in an Area Within the Legislative Power of the United States Is Unsupported by the Law and Contradicted by the Evidence in the Court's Findings of Fact

The Court found as a fact that the Plaintiffs were employed in locations without the boundaries of the United States as per the schedule of their earnings and withholding taxes collected by the Defendants, as follows:

				Earnings	Taxes
1953	Husband	Panama Canal Co.	Canal Zone	$4,883.68	$ 407.01
	Wife	Canal Zone Govt.	Canal Zone	110.00	
1954	Husband	Panama Canal Co.	Canal Zone	5,593.45	1,201.34
	Wife	Panama Canal Co.	Canal Zone	3,982.50	

Refunds on other items in Plaintiffs' original Petition are waived.

In this case the Court of Claims found as a fact that there was no evidence in the record showing that income earned by Plaintiffs either from the U. S. Navy or the U. S. Army, was derived from sources outside the United States. Hence, it is a necessary inference that the earnings and taxes, scheduled as above, were from sources outside the United States. Such a conclusion is consistent with the unquestioned fact that Plaintiffs were located and worked for the Canal Zone Government and the Panama Canal Co., in territory outside the United States and hence such earnings were not taxable because not earned within the United States.

The Court was entirely unwarranted in reaching its vague and unsupported conclusion of fact that Plaintiffs were employed by agencies of the United States and received their earnings as such from sources *within* the boundaries of the United States. Such earnings could not be taxed merely because of the unexplained and irrelevant statement (dictum) that the places of their employment were "located in an area within the legislative power of the United States."

In *Heiner* v. *Doonan*, 285 U.S. 312, this Court said:

> "This Court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment."

For examples the Court cited:

> *Bailey* v. *Alabama*, 219 U.S. 230
> *Manley* v. *Georgia*, 279 U.S. 1-56

> "It is apparent" this Court said in the Bailey case "that a Constitutional prohibition can not be *transgressed* indirectly by the creation of a statutory presumption any more than it can be violated by direct statement. The power to create presumptions is not a means of escape from Constitutional limitations."

Opinion by Mr. Justice Sutherland.

This case cites with approval: *Estate of Schlesinger*, 270 U.S. 260.

The *Wells* case further held that:

> "Rights guaranteed by the Federal Constitution are not to be so lightly treated, they are superior to this supposed necessity."

This Court stated also in its opinion in *U. S.* v. *Wells*, 283 U.S. 102 that many lower Courts have followed the above case of *Heiner* v. *Doonan* and *Schlesinger* v. *Wisconsin*, 270 U.S. 230.

In the above cases the Court reached its conclusion in each case on the principle that:

> ". . . a statute which imposes a tax upon an irrebuttable presumption of fact, which the taxpayer is forbidden to controvert, is so arbitrary and unreasonable that it cannot stand under the 14th Amendment."
>
> Nor is "it material that the 14th Amendment was involved in the Schlesinger case instead of the 5th Amendment. The restraint imposed upon legislation by the due process clause (of the Constitution) of the two amendments is the same."

In the case of *Coolidge* v. *Long*, 282 U.S. 582, this Court held, referring to a previous decision, the Bailey case, 219 U.S. 238:

> ". . . that a statute which imposes a tax upon an assumption of fact which the taxpayer is forbidden to controvert is so arbitrary and unreasonable that it cannot stand under the 14th Amendment."

The same principle as that above was established by this Court in *Nichols* v. *Coolidge*, 274 U.S. 531. In that case this Court said that the effort to collect a tax on the gross estate of a decedent, that all his property could be included

in determining the tax, but to include the property of his wife, by presumption, would violate the Fifth Amendment to the Constitution of the United States. On this subject this Court said:

> "This Court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and affect the 5th Amendment."

Gift in Contemplation of Death

In each of the cases practically the same language as to presumptions was used to deprive taxpayers of some property rights "by assuming facts" which the persons affected were not permitted to disprove were contrary facts.

The Act in question reads as follows:

> "Any transfer of his property in the nature of a final disposition or distribution thereof, made by the deceased within two years prior to his death without such a consideration shall, unless shown to the contrary, *be deemed to have been made in contemplation of death within the meaning of this title.* (Italics ours.)
>
> Sec. 402 Rev. Act 1918, 40 Stat. AT L. 1057.

In effect the Supreme Court opinion, *U. S.* v. *Wells*, 238 U.S. 102, held that the transfer or motive in the disposition or distribution of his property to be effective must be proved.

In the *Hooper* case, 284 U.S. 206, opinion by Mr. Justice Roberts, it was held the husband could not be taxed on his net income including his wife's income and that the inclusion of the wife's income without the authority and inclusion thereof by the husband and wife was a violation of the due process guaranteed by the 14th Amendment to the Constitution.

In the opinion of Mr. Justice Roberts referred to, 284 U.S. 106, this Court said "Such taxation is also arbitrary and capricious."

Another death statute governing gifts was passed on by this Court in the *Schlesinger* case, 270 U.S. 230, in which the statute under attack provided that gifts within six years of death were conclusively presumed to have been in contemplation of death. In this case the opinion was delivered for the Court by Mr. Justice McReynolds from which we quote:

> "The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts made within six years of death were made in anticipation of it, and to tag a graduated inheritance tax upon them without regard to the actual intentions. The presumption is declared to be conclusive, and can not be overcome by evidence. It is no mere prima facie presumption of fact. Decision reversed."

In the *Schlesinger* case Mr. Justice Sutherland reversed the lower court using the following language:

> "The Schlesinger case has since been applied many times by the lower Federal Court, by the Board of Tax Appeals, and by State Courts. They all determined that a statute which imposes a tax upon an assumption of fact which the tax payer is forbidden to controvert is so arbitrary and unreasonable that it can not stand under the 14th Amendment."

Citing 270 U.S. 237, in the *Schlesinger* case above referred to, this Court said:

> "But the presumption here created is not of that kind. It is made definitely conclusive,—incapable of being overcome by proof of the most positive character.

Citing also *Hooper against U.S. Tax Court*, page 230, 43 A.L.R. page 224, referring to the opinion of Mr. Justice Sutherland in *Heiner* v. *Donnan*, 285 U.S. 312, the Court made its ruling to apply to "any purpose whatever" in the following language:

> "The State is forbidden to deny due process of law or the equal protection of the laws *for any purpose whatsoever.*" (Italics ours.)

We also quote from the opinion of *Heiner* v. *Doonan*, 285 U.S. 776, page 780:

> "an attempt by legislative fiat to enact into existence a fact which does not and cannot be made to exist in actuality, and the result is the same."

Opinion in this case was written by Mr. Justice Stone.

The principles above declared, cited, and quoted from in this Court establish the fact that the Court of Claims was utterly without power to declare the earnings of Plaintiffs, while they worked in the Panama Canal Zone as employees of the Canal Zone Government and Panama Canal Co., were paid to them "within the United States."

The Court of Claims decision did not decide the real issue raised by Plaintiffs' petition. The real issue affecting Plaintiffs was taxation on their earnings for the years 1953 and 1954, amounting to a sum in excess of $1,600. The Court of Claims decision by-passes the real issue as to where this money was earned by and paid to Plaintiffs and registers a *non sequitur* conclusion by which that Court refuses to permit Plaintiffs to recover taxes illegally assessed and collected against their earnings which accrued and were paid to them without the boundaries of the United States and not within the United States.

It does not follow legally or factually that the income sources of Plaintiffs were within the United States and there is no basis in the record to justify such a conclusion. The Court of Claims attempts to justify this rejection of Plaintiffs' claims for refund by an arbitrary and capricious statement that

> "Plaintiffs were employed by agencies of the United States located in an area within the legislative power of the United States. Therefore, the income was 'derived from sources within the United States' and we hold it within the taxing power of the Congress."

Such a conclusion is contrary to the Findings of Fact by the Court itself and by the findings of the Commissioner adopted by the Court.

Likewise the Court of Claims reached an arbitrary and capricious conclusion when it made the further statement in its opinion and decision of March 7, 1962

> "Plaintiffs are therefore not entitled to recover and their petition, as amended, will be dismissed.
>
> "It is so ordered."

We call the Court's attention at this point to Chapter 79 Section 7701, page 995 of Internal Revenue Code of 1954, under title "Definitions," reading as follows:

> "(9) UNITED STATES.—The term 'United States' when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia."

Not only does the decision by the Court of Claims arbitrarily and capriciously dismiss Plaintiffs' petition as amended but directly violates the language of the statute just quoted as to territorial limits of the United States.

As is fully disclosed in the above statements and authorities, the central question raised in this case is the arbitrary and conclusive presumption raised against Plaintiffs by the language of Section 931 subsection (i) of the Internal Revenue Code of 1954.

Linked with the above language arises the failure of the Court of Claims to declare whether or not it found subsection (i) of Section 931 unconstitutional because it deprives Plaintiffs, in an arbitrary and conclusive way, from disproving the provisions of subsection (i) of Section 931.

In view of the vitally serious terms of subsection (i) of Section 931, and its arbitrary and conclusive character, closing the doors of proof as to actual facts with respect to the earnings and tax liability of Plaintiffs, we deem it of

greatest importance to further discuss the opinion of the Court below as to the proper interpretation of similar statutes which have been declared invalid and unconstitutional for the reasons which we contend should condemn subsection (i) of Section 931 as also being a perversion of power in the Congress and a clear violation of the due process clauses of the 5th and 14th Amendments to the Constitution.

By an Act of Congress, Section 402(c) of the Revised Act of 1918—40 stat at large, page 1057, the arbitrary language condemned by this Court in U.S. against Wells, 283 U.S. 102, provided that "gifts made in contemplation of death" were invalid and unconstitutional unless factual proof was shown that the testator or donor really did contemplate death and acted for that reason alone, the language of the Court holding that there:

> must be a present contemplation of death. Not so in Wells case. He had many diagnoses and operations, and was accustomed to making conveyances and gifts to friends.

The language of the above statute reads as follows:

> "Any transfer of his property in the nature of a final disposition or distribution thereof, made by the deceased within two years prior to his death without such a consideration shall, unless shown to the contrary, *be deemed to have been made in contemplation of death within the meaning of this title.*" (Italics supplied.)

The Court will please note the use of practically the same language in this quoted provision of law as we have in the statute under attack in this case.

In the Wells case in the clause condemned by the Court the statute read that it should "be deemed to have been made in contemplation of death within the meaning of this title." In construing this statute this Court in 284 U.S.

106, opinion by Mr. Justice Roberts stated that the fact of intention to make a gift in contemplation of death must be proved as any other fact and the presumption of such intention without such proof would be a violation of the due process clause of the 14th Amendment to the Constitution and, of course, to the 5th Amendment of the Constitution as well. Mr. Justice Roberts in his opinion in 204 U.S. 105 stated that "such taxation is arbitrary and capricious."

In a later case, *Heiner v. Doonan*, already cited above, the opinion of this Court stated:

> "The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts made within six years of death were made in anticipation of it, and to tag a graduated inheritance tax upon them without regard to the actual intentions. The presumption is declared to be conclusive, and can not be overcome by evidence. It is no mere prima facie presumption of fact. Decision reversed."

The arbitrary presumption in Section 931, subsection (i) of Internal Revenue Code of 1954, under the terms of which Plaintiffs were assessed taxes for the years 1953 and 1954 as above set out contravenes the due process clause of the 5th and 14th Amendments to the Constitution just as much as do the statutes considered in the opinions of this Court condemning the arbitrary assessment of taxes on gifts in contemplation of death, and the inclusion in the husband's return of income of the income of his wife and in the Schlesinger case, where this Court said that a statute "which imposes a tax upon *an assumption of fact which the tax payer is forbidden to controvert is so arbitrary and unreasonable that it can not stand* under the 14th Amendment." *Schlesinger v. Wisconsin*, 279 U.S. 230. (Italics ours.)

In this case the language of subsection (i) of Section 931 of the Internal Revenue Code of 1954 falls in the same class

as to arbitrariness as the limitation upon gifts made under the 2-year statute or the 6-year statute. In fact the present limitation of subsection (i) of Section 931 contains all the elements of a final presumption of fact with respect to Plaintiffs earnings in the Panama Canal Zone, while working for the Panama Canal Company, that ingenuity could devise, and said presumption is so irrebuttable that opportunity to prove the contrary as to the status of Plaintiff's employment and payments therefor for the years 1953 and 1954 are absolutely foreclosed. Hence, said statute contravenes the due process clause of the 5th Amendment to the Constitution as well as the 14th Amendment because they deny employees of the United States or its agencies an exemption from Federal income taxes when employed by agencies of the United States by providing that income of such employees "shall be deemed to be derived from from sources within the United States" when they were actually derived from earnings in the Panama Canal Zone Government and the Panama Canal Company, without the United States.

Webster's New International Dictionary (1928) defines the word "deem" as follows:

> "To pass judgment; to render a decision; to act as a judge or arbitrator; to sit in judgment over or upon; to judge; also to pronounce judgment upon; to decide (a case) or give (sentence); sometimes, specifically, to judge adversely; to censure or condemn. To conclude or believe on consideration; to form a judgment upon; to hold in opinion; to regard, esteem; think. To give or decree as a result of judgment; to award; ordain."

To pass judgment or to give a sentence implies a hearing upon which a judicial decision may be rendered. Certainly no such opportunity to present the true facts was afforded Plaintiffs. In fact, the questioned statute did not permit a hearing.

CONCLUSION

We can see no warrant for the *provisions* in the opinion of the Court of Claims wherein that Court says that the Panama Canal Government and the Panama Canal Zone are "located in an area within the legislative power of the United States"; nor can we see any logical reason why the Court of Claims should have assumed the power to decide that the monies paid to Plaintiffs for the years 1953 and 1954 were "derived from sources within the United States". Such conclusions are not a result of logical inference or proven fact; for surely such conclusions are not based on anything in the record in the way of evidence supporting such conclusion. Hence, such conclusions fall within the same condemnation as subsection (i) of Section 931 of the Internal Revenue Code of 1954. Such conclusions also contravene the due process clauses of the 5th and 14th Amendments to the Constitution of the United States and the decision of the Court of Claims herein should be reversed and the taxes paid by Plaintiffs for the years 1953 and 1954 should be refunded.

Respectfully submitted,

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